

MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE
September 8, 2006

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held at the Marriott Hotel, Los Angeles Airport, on September 8, 2006. Attendance was as follows:

MEMBERS PRESENT:

Nelson D. Crandall*
Christopher A. Delfino
Bruce R. Deming
Matthew R. Gemello
Steven R. Harmon*
Victor Hsu
Barbara Matthews
William R. Sawyers*
Lemoine Skinner, III
David M. Serepca*
Steven B. Stokdyk
James J. Thompson*
Suzanne L. Weakley*

MEMBERS ABSENT:

Curt C. Barwick
Clint Davis
Peter Heinecke
Nina L. Hong
Brian A. Lebrecht
Michael A. Occhiolini
Stewart Laughlin McDowell
Deborah J. Ruosch
Jennifer Lynn Sostrin
Brian M. Wong
Russell J. Wood

LIAISONS AND GUESTS PRESENT:

Steve Hazen, Executive Committee
Roz Tyson, Securities and Exchange Commission*

These minutes summarize discussion primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up topics listed on the Agenda that are not described in these minutes.

I. ADMINISTRATIVE MATTERS

1. Opening Remarks and Announcements: The meeting was called to order by Co-Chair Matthew Gemello at 9:30 a.m. He thanked the members of the Committee in attendance and noted that a quorum was present.
2. Approval of Minutes: The minutes for the August 2006 meeting were approved in the form circulated, with minor corrections.

* Via telephone.

II. AGENCY AND LIAISONS' REPORTS

1. Securities and Exchange Commission: Roz Tyson reported that the SEC will recommend an amendment to Rule 14a-8 of the Securities Exchange Act of 1934 concerning director nominations by shareholders, in response to the Second Circuit's recent decision in *AFSCME v. American International Group*. The *AFSCME* decision is a victory for shareholder activists, allowing shareholder proposals seeking to amend the bylaws to provide for shareholder nominees to the Board to be included in the annual proxy materials, at company expense. This matter is an outgrowth of the SEC's 2003 proposed rule on securityholder director nominations. The SEC's position is that Rule 14a-8 allows a company to exclude such shareholder proposals, since they relate to elections. In this case, the SEC granted AIG no-action permission to reject the union's shareholder proposal. The District Court agreed with AIG and the SEC, but the Second Circuit reversed, holding that the union's proposal relates to election procedures generally, while Rule 14a-8 only permits a company to reject proposals relating to "an election," *i.e.*, a pending election of specific nominees at a specific shareholders meeting. Ms. Tyson noted that yesterday the SEC issued a press release stating that SEC Staff will develop recommendations to clarify Rule 14a-8, and that the SEC has calendared an open meeting on October 18, 2006 to consider Staff's recommendations.
2. Department of Corporations: No report; no liaison present.
3. State Bar Office of Government Affairs: No report; no liaison present.
4. Secretary of State: No report; no liaison present.
5. ADR Committee: No report; no liaison present.
6. Corporate Law Departments Committee: Steve Harmon reported on the August 17 telephonic meeting of the Corporate Law Departments (CLD) Committee. The incoming chair, Alan Gutterman, wants the CLD Committee to be more productive and take on more active projects. He is also interested in having the CLD Committee jointly sponsor a program with the Corporations Committee on crisis communications. The CLD Committee intends to survey its members to see what they want from it. Steve Hazen, Executive Committee Liaison, mentioned that the incoming chair of the CLD Committee is interested in having nonmember attorneys serve on a CLD Steering Committee to spur more activity.
7. Cyberspace Law Committee: Russ Wood submitted a report by email, which Steve Stokdyk presented. The Cyberspace Law Committee met on August 1 and featured a presentation on blogs and business law by a committee member from Fijitsu's legal department. This committee is tracking a number of State and federal bills relating to network information, privacy and internet safety.
8. Financial Institutions Committee: No report; no liaison present.

9. Non-Profit Corporations Committee: Bill Sawyers reported that the Non-Profit Corporations Committee did not hold a meeting last month. Steve Hazen mentioned that new leadership is expected for the Non-Profit Corporations Committee.
10. Partnerships and LLCs Committee: Lemoine Skinner reported that the Partnerships and LLC Committee did not hold a meeting last month.
11. Executive Committee: Steve Hazen reported that the Executive Committee is pleased with the outcome on SB 1207, and believes that the process was handled well. Last month the Corporations Committee voted to withdraw opposition to SB 1207 after all of the Committee's suggested changes were incorporated in an amended version of the bill. Mr. Hazen stated that the work on SB 1207 is one of the most important things that the Committee has done this year.

Mr. Hazen noted that the orientation for incoming officers will be held on October 15, 2006, via webinar. All incoming officers of the Corporations Committee should participate.

Mr. Hazen exhorted all members to attend the Business Law Section Breakfast at the State Bar Annual Meeting in Monterey. He noted that the cost for officers will be comped.

Mr. Hazen finally reported that membership of the Executive Committee next term will reflect extensive Corporations Committee affiliation.

III. SUBCOMMITTEE REPORTS

1. Legislation:
 - a. Corporations Committee Legislative Update. Chris Delfino handed out a document entitled Corporations Committee Legislative Update, which summarizes in a two-page chart the status of various bills of interest to the Committee. Suzanne Weakley found the chart format to be very helpful, and suggested that the document be attached to the minutes and/or posted on the website. Mr. Delfino agreed to discuss this with the incoming Vice Chair—Legislation. He also requested help in identifying bills that should be tracked.

Mr. Delfino updated the chart he handed out by noting that AB 675, which would require corporations to disclose and explain the difference between profits reported to shareholders and profits reported to the State for tax purposes, was enrolled to the Governor on 8/23/06 but vetoed on 9/7/06.

Mr. Delfino observed that none of the Grafton-related bills has progressed.

b. Update of Active Legislative Projects.

ALP re Close Corporation Act. David Serepca reported that the ALP regarding the Close Corporation Act is moving toward introduction in 2007.

ALP re Section 800. Mr. Serepca reported that a proposal on Section 800 has been posted to the extranet which addresses the “no reasonable possibility” standard and increases the bond for shareholder derivative actions from \$50,000 to \$400,000. Mr. Serepca volunteered to turn this proposal into an ALP with Committee input. The Committee agreed to discuss this at the next meeting.

Bruce Deming then asked about litigator input for this project. Steve Hazen offered to contact Executive Committee members about this. Steve Stokdyk asked for Committee members at larger firms to discuss this project with their litigation partners.

ALP re Section 1800(a). No report.

ALP re Section 307—Director Weighted Voting. Steve Stokdyk delivered Russ Woods’ emailed report. Mr. Wood reported that his draft ALP amending Section 307 to allow director “weighted voting” adds a new subsection (a)(8), providing that individual directors may have the voting powers specified in the corporation’s articles. The text of subsection (a)(8) is modeled on Section 141(d) of the DGCL. The primary difference is that 141(d) provides for a class or series of stockholders having the right to elect directors with voting rights distinct from those of other directors.

A discussion followed regarding stockholder class voting, director weighted voting and special director voting/veto rights. Mr. Hazen remarked that director weighted voting raises fiduciary duty and independence issues. Steve Harmon and others noted the flexibility afforded by director weighted voting and stockholder class voting, which is especially helpful for venture capital financing. Mr. Harmon agreed to summarize the discussion and get comments back to Mr. Wood. Mr. Harmon also volunteered to work with Mr. Wood on this ALP project.

ALP re Nasdaq National Market Conforming Changes. Matt Gemello noted that new volunteers will be solicited for this project.

ALP re Agent for Service of Process. No report.

Bruce Deming asked whether a sponsor could be found for a bill repealing AB 55, the California Corporate Disclosure Act. Chris Delfino agreed to raise the question with Larry Doyle.

2. Communications/Website: David Serepca reported that an E-bulletin on the new NVCA Venture Financing Forms for California corporations will be sent shortly. Victor Hsu informed the Committee that the Fulbright extranet site will remain

available for the Committee's use after his term ends in October, until the site transitions to a new extranet site to be provided by the State Bar.

3. Education/Publications:

a. Handbook for Incorporating a Business in California. Suzanne Weakley reported that the Handbook is now in final form. Steve Hazen offered the congratulations of the Executive Committee for the completion of this project, with special thanks to Teri Shugart and Suzanne Weakley.

A discussion followed on how best to distribute/market the Handbook. The Committee's consensus was to offer a free version on CD-ROM to BLS members and to charge an affordable but nontrivial sum (like \$25) for a printed and softbound version of the Handbook. Ms. Weakley strongly recommended that each member of the Committee receive a printed and bound version of the Handbook *gratis*.

Ms. Weakley wanted to confirm that the URLs of the CD-ROM version could be hot-linked so all the attached forms would be downloadable. Mr. Hazen noted that the forms should not be downloadable separately from the Handbook itself, so readers can see all of the cautionary language regarding use of the forms.

b. October Program in Monterey. Ms. Weakley noted that Steve Harmon and Lemoine Skinner will be presenting an MCLE program on "Recent Corporate Law Developments" on October 6 at the State Bar Annual Meeting in Monterey.

c. January SEI Program in Berkeley. Ms. Weakley reported that proposals have been submitted for two programs: "Broads in the Boardroom" to be presented by Teri Shugart and "Introduction to Securities Law" to be presented by David Serepca and Steve Stokdyk.

d. Potential Article. Ms. Weakley reported that she now has a transcript of Keith Bishop's teleseminar on shareholder voting and will review it to determine how much work is required to turn it into an article for publication.

4. Litigation: No report.

IV. ONGOING PROJECTS

1. Section 2115 Project: Bruce Deming reported no new developments on this project.

2. ABA Task Force on Attorney-Client Privilege: Steve Stokdyk delivered Russ Wood's emailed report. Mr. Wood reported that the Task Force met at the ABA's annual meeting in August, and the agenda included proposed Rule 502 of the Federal Rules of Evidence, on which the Committee commented in April (specifically, on the provision regarding "selective waiver" of the privilege). In early August, the Judicial Conference's Advisory Committee on Evidence Rules

approved the selective waiver provision and recommended the amended rule for public comment. Mr. Wood noted that the Judicial Conference's Advisory Committee bracketed the selective waiver language in the version disseminated for public comment, indicating that it has not decided whether a selective waiver provision should be sent to Congress.

Mr. Wood intends to circulate an email to Committee members with relevant materials from the Judicial Conference and the ABA Task Force. Mr. Wood proposed that the Committee prepare a comment letter on the selective waiver provision, and asked for volunteers to assist with this project. Suzanne Weakley volunteered, and the new Co-Chairs are expected to select an additional Committee member to help. Steve Hazen noted that this project offers the opportunity to appear and testify at public hearings scheduled for early next year.

V. NEXT COMMITTEE MEETING

The next Committee meeting will be held from 9:30 a.m. to 12:30 p.m. on Friday, October 6, during the State Bar Annual Meeting in Monterey, at the Hotel Pacific, Soberanes Room. The Co-Chairs reported that the Committee will have six new members whose terms will begin immediately after the October meeting.

VI. NEW BUSINESS

There was no new business not otherwise discussed in the context above. The meeting was adjourned at approximately 11:05 a.m.



Victor Hsu, Acting Secretary